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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
IVT.0021US

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Typed or printed name **Stephanie Petreas**

Application Number	Filed
09/930,827	August 15, 2001
First Named Inventor	
Dominik J. Schmidt	
Art Unit	**Examiner**
2616	Christopher P. Grey

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number **42,117**
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature

Mark J. Rozman
Typed or printed name

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Telephone number

5/24/07
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of **1** forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Tradeamrk Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Dominik J. Schmidt	§	Group Art Unit:	2616
Serial No.:	09/930,827	§	Examiner:	Christopher P. Grey
Filed:	August 15, 2001	§		
For:	RF Sniffer	§	Atty. Dkt. No.:	IVT.0021US

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant seeks pre-appeal review of the rejection of all pending claims 1-7, 9, and 15-27. It is respectfully submitted that the rejections to all pending claims are clearly erroneous and the burden of an appeal should be avoided.

Pending claims 1 and 24-27 stand rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,625,877 (Dunn). As to claim 1, the rejection is clearly erroneous since Dunn fails to teach each and every element of the recited claim, as required for a valid anticipation rejection. Specifically, Dunn does not teach sniffing for available cellular frequency channels *in a mobile station.* In this regard, the Office Action refers to FIG. 4B, and more particularly block 330 which teaches searching for available air-link channels by a radio and master processor of a base station, not a mobile station. The portions of Dunn cited in the Advisory Action, namely col. 12, lines 16-29 and FIG. 2a, block 129, similarly nowhere teach this sniffing for available cellular frequency channels in a mobile station. Instead, Dunn clearly teaches that the sniffing is performed by a channel radio 103 of a base station under control of the master microprocessor 105. "Upon receiving the command from the master microprocessor 105, the radio [i.e., the

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Stephanie Petreas

radio of the base station] searches, locates and aggregates available radio channels." Dunn, 12:26-29. As such, the rejection is clearly erroneous and claim 1 is patentable.

As to dependent claim 25, Dunn nowhere teaches determining in a mobile station a number of channels for an allocation request based on a size of a file to be transmitted. Instead, while Dunn teaches that the SRU 101 is to send a request for aggregation of air-link channels for transmission of a file, any determination *of the number* of such channels is in master microprocessor 105 (i.e., the base station) and not SRU 101. Dunn, col. 12, lns. 17-42. Simply put, the SRU of Dunn does not determine the number of channels for an allocation request. As to dependent claim 26, neither the cited portions nor anywhere else in Dunn teaches or suggests allocation of *both* cellular frequency channels and a short-range radio channel, as there is no teaching in Dunn whatsoever of short-range radio channels. Instead, all that Dunn teaches is that air-link channels are aggregated; there is no teaching or suggestion that such channels be both cellular frequency channels and a short-range radio channel. Regarding dependent claim 27, there is no teaching or suggestion in Dunn of *requesting* an allocation of preferably *adjacent* cellular frequency channels.

Pending claims 16-23 stand rejected under 35 U.S.C. §103(a) over U.S. Patent Publication No. 2002/0028655 (Rosener) in view of Dunn. Claim 16 recites that a mobile station is to calculate a number of cellular frequency channels to request from a base station. As described above, Dunn fails to teach or suggest a mobile station that performs such a function. Furthermore, as conceded by the Office Action, no such calculation is anywhere disclosed in Rosener. Accordingly, the rejection of claim 16 and the claims depending therefrom is clearly erroneous.

Pending claims 2-4 stand rejected under 35 U.S.C. §103(a) over Dunn in view of U.S. Patent No. 6,430,395 (Arazi). This rejection is clearly erroneous at least for the same reasons discussed above regarding claim 1. Furthermore, Arazi only teaches that communication between mobile station and base station is by a short-range channel, not communication of a first part of data on multiple cellular frequency channels and a second part of the data on a short-range radio channel. Rather, Arazi only teaches that communication between mobile station and base station is via a short-range channel. Arazi, col. 16, lns. 50-67. Because neither of the references anywhere teach or suggest communicating different parts of data on both allocated cellular frequency channels and a short-range radio channel, the rejection is clearly erroneous.

As to the §103(a) rejections of claims 2-7 and 9 over Dunn in view of Rosener, neither Rosener nor Dunn anywhere teach or suggest communication on a short-range radio channel between a mobile station and a base station. Instead, all that Rosener teaches is that short-range communications occur between repeaters within a vehicle and RF (i.e., cellular) communications occur between the repeater and a base station. Thus there is no teaching or suggestion of communicating on a short-range radio channel between a mobile station and a base station. For this further reason, the rejection of claims 2-7 and 9 is clearly erroneous.

Because the rejections violate U.S. Patent and Trademark Office policies, the need for an appeal should be avoided.

Respectfully submitted,

Date: 5/24/07

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